

oxidation, and thus decomposition, and are swiftly deactivated after being added to feed. Ito therefore includes an antioxidant substance selected from carotene, astaxanthin, lutein, dl-alpha-tocopheryl acetate, alpha-tocopherol, SOD, glutathione, and catechins in the composition in order to prevent or inhibit oxidation of the active thereby enhancing its efficacy as an anti-stress agent. Nowhere does Ito teach or even suggest that any of the antioxidants, and lutein in particular, are useful for the enhancement of immunity or for any purpose other than preserving the structural integrity of the active ingredient.

One of the secondary references, Jyonouchi, teaches that the intraperitoneal injection of lutein in mice in specific amounts may enhance humoral immune response in mice. The reference fails to teach or suggest any injection of lutein in any animal other than mice, and fails to teach or suggest oral administration of lutein in any animal for any purpose.

In order to establish obviousness, the Examiner must consider whether the claimed invention *as a whole* would have been obvious in view of the cited references. Consistent with this requirement, distilling an invention down to the "gist" or "thrust" of an invention disregards the requirement of analyzing the subject matter as a whole. See MPEP 2141.02. As such, each and every element of the claimed invention must be considered when determining whether a collection of references would have suggested the invention as a whole.

In this instance, respectfully, the Examiner is improperly disregarding the claimed invention as a whole. A reading of each of the four independent claims of the invention, namely Claims 1, 9, 10, and 11, reveal that the claimed invention recites processes for enhancing immune response of a dog or cat (or increasing lutein concentration, immunoglobulin concentration, or lymphocyte cells) utilizing a diet which contains a very specific amount of lutein. In particular, the claims require the diet to contain from about 1 to about 50 mg/day of lutein. This is a claim limitation that should not be ignored while examining the present claims.

Indeed, reading the claim as a whole, including all limitations, is important in view of the cited combination of references. A combination of Ito with Jyonouchi fails to arrive at the present invention for several reasons. First, as supported by the declaration previously submitted, one of ordinary skill in the art would have failed to infer from the combination of references that lutein would be absorbed at effective levels following oral administration so as to have the claimed effect on the immune system and immune response in a cat or a dog. Indeed, since Jyonouchi only shows humoral immune response in mice by intraperitoneal injection, and Ito merely states that an antioxidant chosen from a laundry list of actives which mentions lutein can be fed orally to protect against degradation of the described active agent, one of ordinary skill would have failed to deduce that immune response could be enhanced in dogs or cats through oral administration in feed. Even further, an even assuming *arguendo* that one would be led to enhance immune

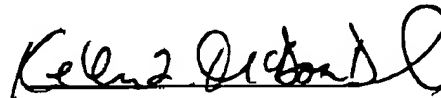
response in dogs or cats through oral administration of lutein, one of ordinary skill would have no understanding or basis for selecting the appropriate, effective amount of lutein in the diet. Indeed, each independent claim of the invention as presently claimed requires from about 1 to about 50 mg/day of lutein in the diet in order to effect the recited functional response, which is not taught or even suggested in either Ito or Jyonouchi. Moreover, the remaining secondary references fail to fill this important gap. If the Examiner persists with the present invention, the Examiner should clearly show that each and every element of the claimed invention is taught through the combination of references.

Accordingly, since the references cited by the Examiner fail to teach each and every element of the claimed invention, the Examiner has failed to establish obviousness. The rejection is therefore improper and should be promptly withdrawn.

CONCLUSION

Applicant therefore respectfully requests that the Examiner withdraw the rejections under 35 U.S.C. § 103(a) and allow Claims 1 and 3 – 11 as amended and otherwise presented herein. If the Examiner believes that personal contact would be beneficial for disposition of the present application, the Examiner is respectfully requested to contact the undersigned.

Respectfully submitted,



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May 2, 2003